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STATE FOR AF/S:HTREGER,JMALONEY AND EB/IFD/OIA:SMILLER  
STATE PASS USTR FOR PCOLEMAN  
JOHANNESBURG FSC FOR RDONOVAN  
JOHANNESBURG TDA FOR DSHUSTER  
USDOC FOR RTELCHIN  
MCC FOR SGAULL  
USAID FOR AA/AFR AND AFR/SA

E.O. 12958: N/A

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SUBJECT: PROCUREMENT REGULATION APPROVED WITH PREFERENTIAL  
TREATMENT FOR MOZAMBIKAN FIRMS

REF: MAPUTO 159

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¶1. (U) Summary. On December 13, the Council of Ministers approved a long-awaited procurement regulation, which is the result of work since 2002 by GRM officials, the donor community and the private sector. The approved language embodies compromises between many conflicting interests and is viewed by other donors as a significant advance. However, preferential treatment for majority-Mozambican-owned companies may cost the GRM both financially and through reduced quality. GRM officials counter that the preferences are limited and are needed to help domestic businesses. End Summary.

¶2. (U) The new procurement regulation approved on December 13 by the Council of Ministers represents several years of discussion and debate between various ministries, donors and the private sector. Most significantly, it is also the first unified procurement law at the federal level that will apply across the board to all Ministries and government procurement. Prior to this regulation, procurement in Mozambique was Ministry and donor specific, with the hodgepodge of old procurement-related laws often not followed or inapplicable.

¶3. (U) During the discussion process, the main area of debate and concern to donor nations regarded language in Article 24 allowing the contracting entity to restrict bidding on certain contracts to national (Mozambican) competitors and to give preferences to national competitors on all contracts. Early drafts had limited all government-financed contracts to Mozambican-owned bidders, raising worries amongst the donor community and prompting several months of discussion. Such a scheme would have not only potentially exposed the GRM to increased costs and decreased quality, but would have severely prejudiced foreign-owned companies. As a result of this discussion, the restriction to national bidders was changed so that it applied only to contracts valued below certain thresholds.

¶4. (U) The approved language of Article 24, section 2, sets the threshold below which the contracting entity may restrict bidding to national competitors at approximately 210,000 USD

for public works or 105,000 USD for provision of goods or services (5.25 billion meticaais and 2.625 billion meticaais, respectively). These thresholds are 50 percent higher than the ones that were in the draft regulation as of early December, and post had heard that there was significant pressure to increase them to help domestic businesses. In addition, Article 24, sections 3(a) and 4 allow the contracting entity to establish margins of preference for national competitors of 10% for public works contracts and 15% for contracts for goods or services. Article 24 also contains domestic content language.

15. (U) Emboffs had met with Finance Ministry officials on December 9, before the final version of the regulation was approved, to discuss our concerns. The officials acknowledged that the regulation favored Mozambican companies over foreign ones, even those long established in Mozambique. They said this was an effort to help Mozambican businesses, which had yet to fully recover from the devastating civil war. They argued the regulation also included aspects that welcomed foreign bidders. As evidence, the officials pointed out that the regulation allowed bids to be submitted in languages other than Portuguese. They did not directly address the issue of whether the regulation was consistent with the Bilateral Investment Treaty that entered into force in March (reftel), but they noted that it allowed different procedures as required under a treaty or other agreement between Mozambique and another government or institution.

16. (SBU) Comment: It is unclear whether the political intent behind the preferential treatment language -- to promote domestic businesses -- will reap benefits greater than its costs. There are still concerns that the clause will increase costs and limit participation, thereby potentially limiting the quality of public works, goods and services provided to the government. Furthermore, by basing preferences solely on nationality of ownership, as opposed to

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more neutral criteria such as place of incorporation or length of time registered in Mozambique, the preferential treatment clauses do little to foster continued foreign investment or improve the overall business climate. That said, the broader donor community is generally pleased with the end result, particularly in light of the starting point, and views the approved regulation as an improvement over the previous situation and an example of successful dialogue.  
End Comment.  
Dudley